

1 NICOLA T. HANNA
United States Attorney
2 BRANDON D. FOX
Assistant United States Attorney
3 Chief, Criminal Division
AMY E. POMERANTZ (Cal. Bar No. 275691)
4 Assistant United States Attorney
Violent and Organized Crime Section
5 1300 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-0730
7 Facsimile: (213) 894-3713
E-mail: amy.pomerantz@usdoj.gov
8

9 Attorneys for Plaintiff
UNITED STATES OF AMERICA
10

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JUAN RAMON MATTA-LOPEZ,

17 Defendant.
18

Nos. CR 85-606-JAK; 88-129-JAK

UNITED STATES' RESPONSE TO
DEFENDANT'S MOTION TO REDUCE
SENTENCE PURSUANT TO 18 U.S.C.
§ 3582(C)(1)(A)

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Amy E. Pomerantz,
22 hereby files this response to defendant Juan Matta-Lopez's (also
23 known as Juan Ramon Matta-Ballesteros's) motion to reduce his
24 sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). The government asks
25 this Court to dismiss the motion, which relies on a statute that does
26 not apply to defendant's convictions. Even if the Court reaches the
27 merits, however, the motion must be denied.
28

1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: April 26, 2020

Respectfully submitted,

5 NICOLA T. HANNA
6 United States Attorney

7 BRANDON D. FOX
8 Assistant United States Attorney
9 Chief, Criminal Division

9 /s/
10 AMY E. POMERANTZ
11 Assistant United States Attorney

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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1 so. Second, even if section 3582(c) did apply, defendant has failed
2 to comply with its mandatory exhaustion requirement--requiring
3 dismissal of the motion or, at minimum, a stay until the appropriate
4 time has passed. And third, even if the Court could reach the
5 motion's merits, defendant is neither eligible for nor entitled to
6 relief.

7 **II. STATEMENT OF FACTS**

8 **A. Defendant's Crimes and Sentence**

9 Defendant, a high-ranking former member of the Guadalajara
10 cartel, trafficked millions of dollars in Colombian cocaine into the
11 United States in the early 1980s. (Presentence Report ("PSR").) He
12 dealt regularly with cartel leaders, including drug kingpin Miguel
13 Angel Felix Gallardo. (Id.) Defendant's criminal history dates back
14 to the 1960s and includes numerous federal convictions, including
15 convictions for his role in the infamous February 7, 1985 kidnapping,
16 torture, and murder of DEA Special Agent Enrique ("Kiki") Camarena,
17 and his informant, Alfredo Zavala.¹

19 ¹ Matta was tried by jury in the Camarana case, in C.D. Cal. No.
20 CR 87-00422. In July 1990, the jury convicted him of multiple counts
21 related to the murder: Count 3, aiding, abetting, and otherwise
22 willfully participating in the kidnapping and murder of Special Agent
23 Camarena for the purpose of maintaining and increasing defendant's
24 position within a racketeering enterprise, in violation of 18 U.S.C.
25 §§ 1959, 2(a); Count 5, conspiracy to kidnap and hold Special Agent
26 Camarena for the purpose of interrogating him on account of the
performance of his official duties, in violation of 18 U.S.C.
§§ 1201(c); and Count 6, aiding, abetting, and otherwise willfully
participating in the abduction and holding of Special Agent Camarena
while he was engaged in, and on account of, the performance of his
official duties, in violation of 18 U.S.C. §§ 1201(a)(5), 2(a). Matta
was sentenced to concurrent terms of life imprisonment as to each of
those three convictions.

27 As the Court is aware, it vacated these convictions based on
28 issues relating to forensic hair evidence, granting defendant a new
trial under 28 U.S.C. § 2255. The government decided not to re-try
the charges related to SA Camarena and thus they were dismissed.

1 At present, defendant is serving two consecutive life sentences
2 arising from two different cases in this District. In the first
3 case, CR 85-00606-PAR, defendant was convicted by a jury of all seven
4 counts in the indictment: (1) Conspiracy to Possess with Intent to
5 Distribute Controlled Substances, 21 U.S.C. § 846, 841(a)(1) (Count
6 1); Distribution of Controlled Substances, 21 U.S.C. § 841(a)(1)
7 (Counts 2-5); Possession with Intent to Distribute Narcotic
8 Controlled Substance, 21 U.S.C. § 841(a)(1) (Count 6); and Continuing
9 Criminal Enterprise, 21 U.S.C. § 848 (Count 7). (PSR at 5.) The
10 overt acts charged in the conspiracy counts involved the receipt,
11 transfer, and possession of approximately 470 kilograms of cocaine
12 and in excess of \$20 million in cash from cocaine sales. (PSR at 10.)
13 As charged in Count 7, defendant occupied a management position in
14 this narcotics enterprise and gained significant proceeds. (PSR at
15 11.) Specifically, ledgers introduced at trial showed the receipt of
16 over \$22 million by one of defendant's co-conspirators on defendant's
17 behalf. (PSR at 13.) On January 16, 1990, defendant was sentenced to
18 a non-parole eligible life sentence concurrent to five 15-year
19 sentences running consecutive to one another. (Williams Decl. ¶ 5,
20 Exh. A.)

21 In the second case, CR No. 88-129-WJR, defendant was likewise
22 convicted by jury of numerous conspiracy and drug distribution
23 charges, along with a continuing criminal enterprise charge. (PSR at
24 27.) As alleged in the indictment in this case, defendant obtained
25 thousands of pounds of Columbian cocaine and directed planes to
26 transport the narcotics into Southern California, where it was then
27 distributed by local dealers working in defendant's network. (CR 88-
28 129-WJR, Dkt. 1.) On March 11, 1991, defendant was sentenced to a

1 life sentence on the continuing criminal enterprise charge,
2 concurrent with ten (10) consecutive 15-year sentences for which he
3 could become parole eligible after serving one-third of the sentence.
4 (Williams Decl. ¶ 6, Exh. A.) This life sentence runs consecutively
5 with the life sentence imposed in case number CR 85-606-PAR, which
6 defendant is still serving. (Id.)

7 **B. Incarceration and Projected Release Date**

8 Defendant is currently serving his two consecutive life
9 sentences at USP Canaan, in Pennsylvania. He has no projected release
10 date.

11 **C. Defendant's Current Motion for Compassionate Release and**
12 **Failure to Exhaust Administrative Remedies**

13 On March 30, 2020, defendant submitted a compassionate-release
14 request to the BOP by electronic mail. (Williams Decl. ¶ 18, Exh. G.)
15 The following day, the Warden of USP Canaan issued a letter denying
16 defendant's request, on the basis that defendant's release would
17 present a danger to the community. (Id., Exh. H.) The Warden
18 further reasoned that "a release would minimize the severity of the
19 offenses to which [defendant] was found guilty of." (Id.)

20 On April 3, 2020, merely four days after he submitted his
21 request to BOP, defendant filed this motion with the Court. (Dkt.
22 No. 248.) At the foundation of defendant's compassionate-release
23 motion are allegations about the potential for an uncontained COVID-
24 19 outbreak at his BOP facility.

25 **D. The Bureau of Prisons' and Congress's Response to COVID-19**

26 BOP has taken aggressive steps to protect inmates' health and to
27 resist the spread of COVID-19. "[M]aintaining safety and security of
28 BOP institutions is [the BOP's] highest priority." BOP, Updates to

1 BOP COVID-19 Action Plan: Inmate Movement (Mar. 19, 2020), available
2 at https://www.bop.gov/resources/news/20200319_covid19_update.jsp.
3 Thus, the BOP Director recently emphasized that the "response [to
4 COVID-19] is the Bureau's top priority." BOP, Statement from BOP
5 Director (Mar. 26, 2020) (Statement from BOP Director), available at
6 [https://www.bop.gov/resources/news/20200326_statement_from_director.j](https://www.bop.gov/resources/news/20200326_statement_from_director.jsp)
7 [sp](https://www.bop.gov/resources/news/20200326_statement_from_director.jsp).

8 The BOP has never underestimated the threat of infectious
9 disease. To the contrary, the BOP has had a Pandemic Influenza Plan
10 in place since 2012. Id.; BOP, Pandemic Influenza Plan---Module 1:
11 Surveillance and Infection Control (Oct. 2012), available at
12 https://www.bop.gov/resources/pdfs/pan_flu_module_1.pdf. That
13 protocol is astoundingly detailed, establishing a six-phase framework
14 requiring BOP facilities to begin preparations when there is first a
15 "suspected human outbreak overseas." Id. at i (emphasis added).

16 At extremely early stages, the Pandemic Influenza Protocol
17 requires BOP facilities to ensure inmates' access to soap, to train
18 them on hand-hygiene practices, and to ensure adequate infection-
19 control supplies. Id. at 9. For every phase thereafter (from
20 preliminary preparation, to a response to active pandemic, to
21 recovery), it includes detailed procedures required of every BOP
22 facility. Id. at 9-11. These include policies for ensuring for
23 creating "social distance" and for requiring "frequent environmental
24 cleaning of 'high-touch' surfaces." Id. at 2-3, 6. Facilities must
25 follow protocols on how to identify sick inmates, track their
26 interactions, and quarantine the exposed. Id. at 4-5. They must
27 also establish contingency plans to ensure that medical care is not
28 disrupted, even when faced with an influx of sick inmates. BOP,

1 Pandemic Influenza Plan---Module 3: Health Care Delivery (October
2 2012), available at
3 https://www.bop.gov/resources/pdfs/pan_flu_module_3.pdf. (The BOP
4 has similar protocols for a wide range of diseases. See BOP Program
5 Statement No. 6190.04, Infectious Disease Management (June 3, 2014),
6 available at https://www.bop.gov/policy/progstat/6190_004.pdf.)

7 The BOP implemented its Pandemic Influenza Protocol in January
8 2020, modified as a COVID-19 Action Plan. BOP, Action Plan Phase V
9 (Mar. 31, 2020) ("Action Plan Phase V"), available at
10 https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp
11 In Phase 1 of that plan, the BOP began developing policies in
12 consultation with the Centers for Disease Control. See BOP, COVID-19
13 Action Plan: Agency-Wide Modified Operations (March 13, 2020) ("BOP
14 Action Plan"), available at
15 https://www.bop.gov/resources/news/20200313_covid-19.jsp.

16 Since then, the BOP has serially escalated its response. BOP,
17 Bureau of Prisons Update on COVID-19 (Mar. 24, 2020), available at
18 [https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_co](https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf)
19 [vid19_update.pdf](https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf). On March 13, the BOP moved to Phase 2 of its
20 Action Plan, taking steps to "mitigate the spread of COVID-19" in
21 prisons, for the protection of both inmates and staff. See BOP
22 Action Plan, supra. The BOP suspended social and legal visits,
23 curtailed inmate movement, established enhanced screening procedures
24 for inmates and staff, and curtailed staff travel. Id. Consistent
25 with the Pandemic Flu Protocol, facilities adopted "modified
26 operations"---including staggered meal and recreation times---to
27 promote social distancing. Id. Just five days later, the BOP
28 escalated to Phase 3--taking additional steps, including ensuring

1 that "all cleaning, sanitation, and medical supplies" had been
2 inventoried and were adequately stocked. Id.

3 Phases 4 and 5 followed in late March; Phase 6 followed in mid-
4 April. Beginning March 26, the BOP required all newly admitted
5 inmates to be quarantined or isolated for a minimum of 14 days "or
6 until cleared by medical staff." See Action Plan Phase V, supra. On
7 April 1, the BOP instituted a nationwide lockdown. Id. For at least
8 a two-week period, "inmates in every institution [were] secured in
9 their assigned cells/quarters to decrease the spread of the virus."
10 Id. The BOP has also "significantly decreas[ed] incoming movement.
11 Id. Modified operations will continue, for all institutions, until
12 at least May 18, 2020. Federal Bureau of Prisons, Bureau of Prisons
13 COVID-19 Action Plan: Phase Six (April 14, 2020), available at
14 [https://www.bop.gov/resources/news/pdfs/20200414_press_release_action](https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf)
15 [_plan_6.pdf](https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf).

16 Meanwhile, the BOP has continued working with the CDC,
17 confirming that its approach aligns with current CDC guidance for
18 COVID management in correctional facilities. Federal Bureau of
19 Prisons, Correcting Myths About BOP and COVID-19, at 1, available at
20 https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformat
21 [ion_bop_covid19.pdf](https://www.bop.gov/coronavirus/docs/correcting_myths_and_misinformat_ion_bop_covid19.pdf) ("Correcting Myths"). Currently, BOP medical
22 staff are "conducting rounds and checking inmate temperatures at
23 least once a day"--twice a day where inmates are quarantined or in
24 isolation. Id. All BOP staff and inmates have been issued cloth
25 masks to wear on a daily basis--with staff required to wear masks,
26 gloves, and potentially gowns when dealing with isolated and
27 quarantined inmates. Id. at 1, 3. "Cleaning supplies have been
28 provided to inmates," and the BOP has provided training on CDC best

1 practices regarding disease transmission and prevention (including
2 sanitation). Id. at 2. Common areas are sanitized multiple times a
3 day. Id. at 3.

4 The gravity and severity of these measures reflect BOP's
5 commitment to fighting COVID-19 and protecting inmates. And,
6 although the BOP has not been immune from the pandemic, it has "thus
7 far been fortunate in that [its] rate of COVID-19 infection is
8 remarkably low." Statement from BOP Director, supra. There have
9 been no inmates diagnosed with COVID-19 in defendant's facility to
10 date. And, as of today--despite tens of thousands of COVID-19 cases
11 across the country and over 150,000 inmates under BOP's care--799 BOP
12 inmates have been diagnosed with COVID-19. All are (or were)
13 isolated from fellow inmates and receiving medical treatment; 385
14 have recovered. BOP, COVID-19 Coronavirus (updated daily at 12pm
15 Pacific), available at <https://www.bop.gov/coronavirus/index.jsp>
16 (last visited April 26, 2020). "Inmates whose conditions cannot be
17 managed within the institution are sent to the local hospital[.]"
18 Correcting Myths, supra, at 2.

19 Of course, "as warned by the Surgeon General of the United
20 States, [the BOP] expect[s] to have more cases as the virus continues
21 to spread in the general community," but they "will continue to
22 diligently support all persons system-wide while doing everything
23 [they] can to do [their] part in mitigating the spread of the virus."
24 Statement from BOP Director, supra.

25 **III. ARGUMENT**

26 Defendant's motion should be summarily rejected because he is
27 ineligible to petition the Court directly for compassionate release.

1 The general rule is that a district court may not modify a term
2 of imprisonment once it has been imposed unless Congress has created
3 exceptions to this rule of finality. As the Supreme Court has
4 recognized, finality is an important attribute of criminal judgments,
5 and one "essential to the operation of our criminal justice system."
6 Teague v. Lane, 489 U.S. 288, 309 (1989) (plurality opinion).
7 Accordingly, it is well established that once a district court has
8 pronounced sentence and the sentence becomes final, the court has no
9 inherent authority to reconsider or alter that sentence. Rather, it
10 may do so only if authorized by statute. See, e.g., Dillon v. United
11 States, 560 U.S. 817, 824-25 (2010); United States v. Addonizio, 442
12 U.S. 178, 189 & n.16 (1979); United States v. Washington, 549 F.3d
13 905, 917 (3d Cir. 2008); United States v. Smartt, 129 F.3d 539, 540
14 (10th Cir. 1997). One such is 18 U.S.C. § 3582(c)--but it does not
15 apply to defendant at all.

16 Because defendant was convicted before November 1, 1987, he is
17 subject to 18 U.S.C. § 4205(g) rather than 18 U.S.C. § 3582. Under
18 section 4205(g), only BOP rather than the defendant can move for
19 relief. BOP has not filed such a motion on defendant's behalf. And
20 indeed, it cannot: defendant's life sentence without parole renders
21 him an "ineligible offender" under BOP regulations. 28 C.F.R.
22 § 571.64. On this basis alone, defendant's motion must be dismissed.

23 But even if 18 U.S.C. § 3582(c) did apply to defendant, it
24 provides no path to relief. At present, defendant's motion is
25 unexhausted. And even if this Court could reach the motion's merits,
26 defendant's claims must fail: he is not eligible for compassionate
27 release and, even if he were, the COVID-19 crisis does not justify a
28 permanent reduction of his well-deserved consecutive life sentences.

A. Because 18 U.S.C. § 3582(c) Does Not Apply to Defendant, He May Not Petition the Court Directly for Release

This Court should dismiss defendant's motion for compassionate release because the applicable statute, 18 U.S.C. § 4205(g), does not permit defendant to seek such relief directly from the Court.

Prior to the Sentencing Reform Act of 1984 ("SRA"), 18 U.S.C. § 4205(g) governed when a sentencing court could reduce the sentence of a federally-convicted prisoner. The SRA then repealed section 4205(g) and replaced it with 18 U.S.C. § 3582(c), which became effective on November 1, 1987. Unlike section 4205(g), which required that any motion for relief be brought by the BOP, 28 C.F.R. §§ 571.60, 571.62, section 3582(c), as amended by the First Step Act in 2018, permits a federal inmate to petition the sentencing court directly for compassionate release (after exhaustion of administrative remedies, or after 30 days from the receipt of the inmate's request for compassionate release with the warden of the facility, whichever comes earlier). 18 U.S.C. § 3582(c)(1)(A).

Contrary to what defendant's motion assumes, section 3582(c) simply does not apply to him at all. Amendments to the SRA explicitly provide that section 3582(c) would apply only to offenses occurring after its effective date;² offenses committed prior to November 1, 1987 were deemed subject to "preexisting law"--namely, section 4205(g). See United States v. Scarbrough, 1:73-CR-32-HAB, 2019 WL 2482710, at *2 (N.D. Ind., 2019) (citing SRA § 235(a)(1); as

² The Senate Report on the provision establishing the effective date stated: "[a]s to an offense committed prior to the effective date, the preexisting law will apply as to all substantive matters including the impossible sentence." S. Rep. No. 98-225, 98th Cong., 1st Sess, 189, reprinted in 1984 U.S.C.C.A.N. 3182, 3372.

1 amended Sentencing Reform Amendments Act of 1985 § 2, Pub. L. 99-217,
2 99 Stat. 1728, Dec. 26, 1985; Sentencing Act of 1987 § 2, Pub. L.
3 100-182, 101 Stat. 1266, Dec. 7, 1987).

4 Here, both of the convictions for which defendant is serving
5 life sentences involved offense conduct that occurred before November
6 1, 1987. First, as to case number CR 85-00606-PAR, the date of
7 offense conduct for the continuing criminal enterprise conviction is
8 listed as June 23, 1981. (Williams Decl., Exh. A at 4.) Similarly,
9 the offense underlying the continuing criminal enterprise charge in
10 case number CR 88-129-WJR occurred on July 24, 1984. (Williams
11 Decl., Exh. A at 5.) Thus, defendant is serving terms of
12 imprisonment for crimes that were committed before enactment of the
13 SRA; section 4205(g), not section 3582(c), thus governs. See 28
14 C.F.R. § 572.40.

15 As noted, "[r]elief under section 4205(g) requires a motion by
16 BOP." Scarborough, 2019 WL 2482710, at *2 (citing United States v.
17 Booker, 543 U.S. 220, 300 (2005) (noting that under § 4205(g)
18 "[s]entencing judges had the discretion to reduce a minimum term of
19 imprisonment upon the recommendation of the Bureau of Prisons")).
20 Here, not only has BOP not filed a motion in support of defendant's
21 release, the Warden at USP Canaan denied defendant's request for a
22 reduction in sentence on grounds that his release would present a
23 danger to the community. (Williams Decl., Exh. H.) Moreover, BOP
24 regulations would preclude it from bringing a compassionate release
25 motion on defendant's behalf: because defendant was sentenced to life
26 without parole in case number CR 85-00606-PAR, he is an "ineligible
27 offender" for purposes of compassionate release. See 28 C.F.R.
28 § 571.6 ("The Bureau of Prisons cannot initiate such a motion [for

1 compassionate release] on behalf of federal offenders who committed
 2 their offenses prior to November 1, 1987, and received non-parolable
 3 sentences.")

4 The Court therefore can, and must, dismiss defendant's motion on
 5 this basis alone. See Scarborough, 2019 WL 2482710, at *2-3; United
 6 States v. Woolum, Case No. 5:84-CR-21-TBR 2020 WL 1963787, at *2
 7 (W.D. Ky., April 23, 2020) (dismissing compassionate release motion
 8 for lack of jurisdiction where defendant's sentence was imposed prior
 9 to November 1, 1987 and defendant, not BOP, filed the motion); cf.
 10 Sims v. Holenchik, No. CV 08-0978-RGK (MLG), 2009 WL 1505175 (C.D.
 11 Cal., 2009) (habeas corpus petitioner was ineligible for
 12 compassionate release where the petitioner committed his offenses
 13 prior to November 1, 1987 and received a non-parolable sentence).

14 **B. Defendant is Likewise Ineligible For Relief Under 18 U.S.C.**
 15 **§ 3582(c)(1), Even If It Were to Apply**

16 1. Legal framework for compassionate release under 18
U.S.C. § 3582(c)

17 As noted above, compassionate release is one of the few
 18 exceptions to the rule precluding revision of criminal sentences
 19 after their imposition, allowing a court to "reduce the term of
 20 imprisonment (and . . . impose a term of probation or supervised
 21 release with or without conditions that does not exceed the unserved
 22 portion of the original term of imprisonment)[.]" 18 U.S.C.
 23 § 3582(c)(1). This relief, however, is both drastic and permanent.
 24 It is thus subject to strict statutory conditions.

25 First, a district court can evaluate a defendant's request for
 26 compassionate release only "after the defendant has fully exhausted
 27 all administrative rights" before the BOP. Specifically:
 28

1 after the defendant has fully exhausted all administrative
2 rights to appeal a failure of the Bureau of Prisons to
3 bring a motion on the defendant's behalf or the lapse of 30
4 days from the receipt of such a request by the warden of
5 the defendant's facility, whichever is earlier[.]

6 18 U.S.C. § 3582(c)(1)(A). This requirement is mandatory and
7 jurisdictional. See generally Shaw v. Bank of America Corp., 946
8 F.3d 533, 541 (9th Cir. 2019) ("statutorily-provided exhaustion
9 requirements deprive the court of jurisdiction"); United States v.
10 Weidenhamer, No. CR016-01072-001-PHX-ROS, 2019 WL 6050264, at *2
11 (D. Az. Nov. 8, 2019) (citing cases).

12 Second, in evaluating compassionate-release requests, courts
13 must follow both the statute and relevant, binding policy statements.
14 See id.; 28 U.S.C. § 994(t); USSG § 1B1.13. Pursuant to those
15 authorities, to be eligible for compassionate release, a defendant
16 must demonstrate: (1) the existence of extraordinary and compelling
17 reasons, within the meaning of the statute; and (2) that he is not a
18 danger to the community. 18 U.S.C. § 3582(c)(1)(A). Specifically,
19 the statute requires that any reduction be "consistent with
20 applicable policy statements issued by the Sentencing Commission"--in
21 this case, USSG § 1B1.13. Id. As the Supreme Court recognized in
22 Dillon, 560 U.S. at 827, because § 3582(c) permits a sentencing
23 reduction only where it is "consistent with applicable policy
24 statements issued by the Sentencing Commission," such policy
25 statements are binding on a court determining eligibility.

26 USSG § 1B1.13 explicitly defines the "extraordinary and
27 compelling reasons" that make a defendant eligible for compassionate
28 release. See 28 U.S.C. § 994(t). They include, as relevant here,
(1) a "terminal illness"; (2) a serious medical condition that "that
substantially diminishes the ability of the defendant to provide

1 self-care within the environment of a correctional facility and from
2 which he or she is not expected to recover"; or (3) a defendant who
3 is at least 65 years old, is experiencing a serious deterioration in
4 physical or mental health because of the aging process, and "has
5 served at least 10 years or 75 percent of his or her term of
6 imprisonment, whichever is less." USSG § 1B1.13 (other grounds
7 omitted). USSG § 1B1.13, comment. (n.1(A)-(B)). "[R]ehabilitation
8 of the defendant is not, by itself, an extraordinary and compelling
9 reason for purposes of this policy statement." Id., comment. (n.3).

10 Defendant bears the burden to prove both that he has "exhausted
11 all administrative rights" and that "extraordinary and compelling
12 reasons" exist to support his motion. 18 U.S.C. § 3582(c)(1)(A); see
13 United States v. Greenhut, No. 18-CR-48-CAS, 2020 WL 509385, at *1
14 (C.D. Cal. Jan. 31, 2020) (defendant bears the burden of establishing
15 entitlement to sentencing reduction); United States v. Hamilton, 715
16 F.3d 328, 337 (11th Cir. 2013) ("defendant, as the § 3582(c)(2)
17 movant, bears the burden of establishing" eligibility); see generally
18 United States v. Butler, 970 F.2d 1017, 1026 (2d Cir. 1992) ("A party
19 with an affirmative goal and presumptive access to proof on a given
20 issue normally has the burden of proof as to that issue.").

21 Third, even for defendants who are statutorily eligible,
22 compassionate release is a "rare" and "extraordinary" remedy, within
23 district courts' discretion to deny. United States v. Chambliss, 948
24 F.3d 691, 693-94 (5th Cir. 2020); United States v. Mangarella, No.
25 06-CR-151, 2020 WL 1291835, at *2-*3 (W.D.N.C. Mar. 16, 2020).
26 Specifically, "it is a rare case in which health conditions present
27 an 'exceptional reason'" to allow for release where detention would
28 otherwise be warranted. See, e.g., United States v. Wages, 271 F.

1 App'x 726, 728 (10th Cir. 2008) (collecting pre-trial detention
 2 cases); accord United States v. Willis, 382 F. Supp. 3d 1185, 1188
 3 (D.N.M. 2019) ("most courts treat compassionate release 'due to
 4 medical conditions [a]s ... a rare event."). This reluctance to
 5 expansively apply compassionate release is grounded in a concern that
 6 any less narrow application would yield significant sentencing
 7 disparities. United States v. Ebberts, --- F. Supp. 3d. ---, 2020 WL
 8 91399, at *6 (S.D.N.Y. Jan. 8, 2020).

9 2. Defendant Has Failed to Exhaust Administrative
 10 Remedies, Thus Depriving this Court of Authority to
 11 Consider His Claims

12 At present, this Court lacks authority to act on defendant's
 13 compassionate-release motion at this time even if 18 U.S.C.
 14 § 3582(c)(1)(A) applied to his crimes. Under section 3582(c)(1)(A),
 15 the Court "may not modify a term of imprisonment once it has been
 16 imposed except" upon a defendant's motion "after the defendant has
 17 fully exhausted all administrative rights to appeal a failure of the
 18 Bureau of Prisons to bring a motion on the defendant's behalf or the
 19 lapse of 30 days from the receipt of such a request by the warden of
 20 the defendant's facility, whichever is earlier[.]" Because this
 21 statutory condition has not been satisfied here, the Court lacks
 22 authority to adjudicate defendant's claims. See Shaw, 946 F.3d at
 23 541. Moreover, contrary to defendant's assertion, failure to exhaust
 24 cannot be excused. Instead, as the Third Circuit recently held,
 25 § 3882(c)(1)(A) "presents a glaring roadblock foreclosing
 26 compassionate release at this point. United States v. Raia, 954 F.3d
 27 594, 597 (3d Cir. 2020).
 28

1 a. Defendant did not wait the required 30 days
2 before raising this motion with the Court

3 Defendant submitted his request for compassionate release on
4 March 30, 2020. (Williams Decl. ¶ 18, Exh. G.) The following day,
5 on March 31, 2020, the warden issued a letter denying his request for
6 release. (Id., Exh. H.) However, 30 days have not elapsed, as
7 required by 18 U.S.C. § 3582(c)(1)(A)(i). Accordingly, this Court
8 should dismiss his motion as premature or wait until the required 30
9 days have elapsed.

10 b. Failure to exhaust cannot be excused

11 Contrary to what defendant argues, this Court may not simply
12 "waive" administrative exhaustion requirements because of COVID-19.
13 (Mot. at 11-20.) "[S]tatutorily-provided exhaustion requirements
14 deprive the court of jurisdiction and, thus, preclude any exercise of
15 discretion by the Court." Shaw, 946 F.3d at 533 (citation omitted).
16 Given § 3582(c)(1)(A)'s plain language and purpose, the requirements
17 for filing a sentence reduction motion--including the that defendant
18 exhaust administrative remedies or wait 30 days after filing a
19 request with the warden--are jurisdictional. Section 3582(c) states
20 that a "court may not modify" a term of imprisonment except in
21 enumerated circumstances. 18 U.S.C. § 3582(c). It thus "speak[s] to
22 the power of the court," Landgraf v. USI Film Prods., 511 U.S. 244,
23 274 (1994) (citation omitted), delineating "when, and under what
24 conditions," a court may exercise its "adjudicatory authority,"
25 Bowles v. Russell, 551 U.S. 205, 212-13 (2007) (quoting Eberhart v.
26 United States, 546 U.S. 12, 16 (2005) (per curiam)). That conclusion
27 is reinforced by courts' historical powerlessness to modify a
28

1 sentence once entered. See Dillon, 560 U.S. at 825. United States v.
2 Mayer, 235 U.S. 55, 67-69 (1914).

3 Courts sometimes disagree whether time limits or other
4 restrictions are jurisdictional or instead are mandatory claim-
5 processing rules. See, e.g., Fort Bend County v. Davis, 139 S. Ct.
6 1843, 1848-50 (2019). Although the government maintains that the 30-
7 day time limit in § 3582(c)(1)(A) is jurisdictional, the point is
8 ultimately academic. Even if § 3682(c)(1)(A)'s exhaustion
9 requirement is not jurisdictional, it is at least a mandatory claim-
10 processing rule that must be enforced if a party "properly raise[s]"
11 it. Eberhart, 546 U.S. at 19. The government raises the rule here,
12 and it thus must be enforced.

13 COVID-19 does not alter this conclusion. While judicially
14 created exhaustion requirements may sometimes be excused, a court may
15 not ignore a statutory command. "[M]andatory exhaustion
16 statutes . . . establish mandatory exhaustion regimes, foreclosing
17 judicial discretion." Ross v. Blake, 136 S. Ct. 1850, 1857 (2016).
18 Thus, exhaustion remains mandatory regardless of a court's view of
19 the merits: "[o]bviously, the rules requiring exhaustion of the
20 administrative remedy cannot be circumvented" simply by "asserting
21 that [an opposing party's argument is] groundless[.]" Meyers v.
22 Bethlehem Shipping Corp., 303 U.S. 41, 51-52 (1938).

23 Consistent with these rules, numerous courts have rejected
24 similar claims in the context of unexhausted COVID-19-based requests
25 for compassionate release. "Because defendant failed to exhaust his
26 administrative remedies, his request for compassionate release based
27 on COVID-19 concerns fails." United States v. Shah, No. 10-70-CJC,
28 ECF No. 329, at 3 (C.D. Cal. Mar. 30, 2020). Absent such exhaustion,

1 the court "does not have authority to grant the requested relief."
2 United States v. Sloane, No. 19-CR-10117-IT-11, ECF No. 647, at 2 (D.
3 Mass. Mar. 19, 2020) (noting no request made to the USP Lompoc
4 Warden); United States v. Gileno, No. 19-CR-161-VAB-1, 2020 WL
5 1307108, at *3-*4 (D. Conn. Mar. 19, 2020) (denying COVID-19-based
6 compassionate-release motion for lack of exhaustion); United States
7 v. Eberhart, No. 13-CR-313-PJH-1, 2020 WL 1450745, at *2 (N.D. Cal.
8 Mar25, 2020) (same); United States v. Neman, No. 14-521-JAK, ECF No.
9 863, at 4-6 (C.D. Cal. Mar. 30, 2020) (same).

10 Exhaustion is particularly inexcusable for errors that an
11 administrative tribunal is competent to address. Barron v. Ashcroft,
12 358 F.3d 674, 678 (9th Cir. 2004). Indeed, "[g]iven BOP's shared
13 desire for a safe and healthy prison environment . . . strict
14 compliance with § 3582(c)(1)(A)'s exhaustion requirement takes on
15 added--and critical--importance." Raia, 954 F.3d, at 597. Here, the
16 BOP is not merely competent to address defendant's compassionate-
17 release claims; it is uniquely qualified to do so. Until the First
18 Step Act, the BOP had exclusive authority to adjudicate such claims.
19 Notably, the First Step Act did not change the factors relevant to
20 compassionate release, only the procedures by which a defendant can
21 raise such claims. Ebbers, 2020 WL 91399, at *4. The BOP thus has
22 immense expertise, both in (1) assessing the safety and health of
23 their inmates and (2) managing the administration of their
24 facilities. As noted above, it likewise has other administrative
25 procedures potentially available for addressing COVID-19-based
26 concerns--none of which defendant has given them an opportunity to
27 evaluate. Exhaustion cannot--but also should not--be excused.
28 Eberhart, 2020 WL 1450745, at *2 (declining to excuse failure to

1 exhaust COVID-19 compassionate-release motion); Neman, No. 14-521-
2 JAK, ECF No. 863, at 6 (same).

3 Until 30 days have elapsed since defendant applied for
4 compassionate release with BOP, this Court lacks authority to grant
5 relief. 18 U.S.C. § 3582(c)(1)(1). The Court should thus dismiss
6 defendant's motion. At minimum, the Court should stay consideration
7 of the motion until the BOP has completed its administrative review.

8 3. Defendant Has Failed to Demonstrate an "Extraordinary
9 and Compelling" Reason to Allow Release in His Case

10 Even if the Court had authority to consider the merits of
11 defendant's unexhausted claims--which for multiple reasons, it does
12 not--defendant has failed to establish his eligibility for
13 compassionate release. "The First Step Act did not revise the
14 substantive criteria for compassionate release"--criteria that is set
15 forth in the Sentencing Commission's binding "policy statement," USSG
16 1B1.13. Ebbers, 2020 WL 91399, at *4-*5; 18 U.S.C. § 3582(c)(1)(A).
17 Here, defendant does not identify an "extraordinary and compelling
18 reason warrant[ing]" a reduction under that definition. 18 U.S.C.
19 § 3582(c)(1)(A). He is thus ineligible for compassionate release.

20 As the Third Circuit recently held, "[w]e do not mean to
21 minimize the risks that COVID-19 poses in the federal prison system,"
22 but the "mere existence of COVID-19 in society and the possibility
23 that it may spread to a particular prison cannot independently
24 justify compassionate release"--particularly given "BOP's statutory
25 rule, and its extensive and professional efforts to curtail the
26 virus's spread." Raia, 594 F.3d, at 597.

1 a. Defendant is not eligible for compassionate
2 release

3 As a matter of law, a defendant is eligible for compassionate
4 release only if he can demonstrate "extraordinary and compelling
5 reasons warrant[ing] such a reduction," "consistent with applicable
6 policy statements issued by the Sentencing Commission." Id. Thus,
7 as courts have recognized, Congress intended that the "Sentencing
8 Commission, not the judiciary, determine what constitutes an
9 appropriate use of the 'compassionate release' provision." United
10 States v. Willingham, No. CR113-010, 2019 WL 6733028, at *2 (S.D. Ga.
11 Dec. 10, 2019) (noting split in authority). Although courts have
12 taken different views on this issue, the government's position is
13 that the Sentencing Commission's policy statement--USSG § 1B.1.13--is
14 thus binding on this Court. See Dillon, 560 U.S. at 827; see, e.g.,
15 United States v. Saldana, --- F. App'x ---, 2020 WL 1486792 (10th
16 Cir. Mar. 26, 2020); United States v. Nasirun, No. 8:99-CR-367, 2020
17 WL 686030, at *2 (M.D. Fla. Feb. 11, 2020); United States v.
18 Rivender, No. 10-CR-222, 2019 WL 3816671, at *3 (D. Conn. Aug. 14,
19 2019); but see, e.g., United States v. Wade, No. 99-CR-257, 2020 WL
20 1864906, at *4-*5 (C.D. Cal. Apr. 13, 2020).

21 "General concerns about possible exposure to COVID-19 do not
22 meet the criteria for extraordinary and compelling reasons for a
23 reduction in sentence set forth in the Sentencing Commission's policy
24 statement[.]" Eberhart, 2020 WL 1450745, *2. Those criteria
25 include, as relevant here:

- 26 • The medical condition "of the defendant": specifically,
27 whether the defendant has either a "terminal illness" or a
28 "serious physical or medical condition" that "substantially

diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he . . . is not expected to recover." USSG § 1B1.13, comment. (n.1(A)(i)-(ii));

- The "age of the defendant": specifically, whether defendant is "at least 65 years old," is "experiencing a serious deterioration in physical or mental health because of the aging process," and has served at least 10 years or 75% of his term of imprisonment. Id., comment. (n. 1(B)); or
- "As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with," his illness, age, and family circumstances. Id., comment. (n.1(D)).³

The global COVID-19 pandemic is not a factor specific to defendant's case at all--and, while his anxieties are certainly not frivolous, he offers no case-specific facts establishing his eligibility for compassionate release under USSG § 1B1.13. Although defendant has health concerns, he primarily emphasizes the general risk of COVID-19: arguments that are general, wide-ranging, and would apply to essentially every unhealthy inmate presently in custody. But, as of this filing, there are no reported cases of COVID-19 amongst inmates or staff at USP Canaan. See BOP COVID-19 Coronavirus

³ Thus, the Court may consider factors set forth in the relevant BOP regulation governing compassionate release: BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g) (January 17, 2019), available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf. Those factors make no material difference here.

1 Disease Resource, available at
2 <https://www.bop.gov/coronavirus/index.jsp> (last visited April 26,
3 2020).

4 Particularly considering both how the BOP has addressed COVID-19
5 generally, and the lack of specific concerns at USP Canaan
6 specifically, defendant's circumstances are not sufficiently
7 extraordinary and compelling to justify a modified sentence. Indeed,
8 defendant's arguments totally overlook the BOP's ability to treat
9 infectious disease. Even chronic conditions "that can be managed in
10 prison are not a sufficient basis for compassionate release." United
11 States v. Ayon-Nunez, No. 16-cR-130-DAD, 2020 WL 704785, at *2-3
12 (E.D. Cal. Feb. 12, 2020). Thus, the Court "cannot assume that the
13 Bureau of Prisons will be unable to manage [any] outbreak or
14 adequately treat [defendant] should it emerge at his correctional
15 facility while he is still incarcerated." Gileno, 2020 WL 1307108,
16 at *4 (denying compassionate-release motion in COVID-19-related case
17 involving a defendant who raised specific health concerns); accord
18 Shah, No. 10-70-CJC, ECF No. 329, at 3. By defendant's logic, such
19 conditions would universally qualify convicted inmates for shorter
20 sentences given the present pandemic. That is and cannot be the
21 case.

22 Defendant's specific health concerns do not alter this
23 conclusion. Defendant points to myriad issues from which he suffers,
24 including:

- 25 • Benign prostatic hyperplasia with lower urinary track
26 symptoms, which causes him to have to urinate frequently
27 (Mot. at 22);

- 1 • Congestive heart failure, which caused him to suffer an
- 2 episode of a fast abnormal heartbeat requiring
- 3 hospitalization in May 2018 (Mot. at 21);
- 4 • A 2017 diagnosis of chronic obstructive pulmonary disease,
- 5 which is treated with inhalers (Mot. at 21);
- 6 • Chronic low back pain and degenerative discs (Mot. at 22-
- 7 23);
- 8 • Knee issues, which led to surgery for a knee replacement
- 9 on September 19, 2018 (Mot. at 23);
- 10 • Macular degeneration (Mot. at 24); and
- 11 • Cognitive impairment, including a 2017 diagnosis of a
- 12 delusional disorder.

13 These health concerns do not, by themselves, satisfy USSG
14 § 1B1.13: defendant is not, for example, terminally ill, or subject
15 to a serious and unrecoverable condition that makes him unable to
16 "provide self-care" within a BOP facility. USSG § 1B1.13, comment.
17 (n.1(A)(i)-(ii); see also United States v. Vangh, 2019 WL 6907983 (D.
18 Minn. Dec. 19, 2019) (denying motion for a 63-year-old legally blind
19 defendant who suffered numerous ailments, even though warden
20 recommended consideration for compassionate release; defendant failed
21 to demonstrate how his condition has substantially diminished his
22 ability to provide self-care within the environment of a correctional
23 facility, and each of his problems were addressed with assistive
24 devices). Defendant's medical records indicate that his health
25 issues are being adequately addressed with treatment; none of his
26 conditions are sufficiently serious to warrant housing at a BOP
27 medical facility. See United States v. Burgos-Martinez, 2019 U.S.
28 Dist. LEXIS 172925 (S.D. Fla. Oct. 4, 2019) (denying motion of a 78-

1 year-old defendant with failing health who was not housed at a
2 medical center and did not state that he was unable to care for
3 himself).

4 Indeed, a motions panel of the Third Circuit recently denied a
5 motion for bail pending appeal based on COVID-19 concerns that were
6 argued to be amplified because of the defendant's specific health
7 problems. In United States v. Davis, No. 19-1604, ECF No. 50 (3d
8 Cir. Mar. 20, 2020), appellant James Davis sought release from
9 custody pending appeal due to a "severe risk of death from COVID-19,"
10 and specifically alleged that he was 69 years old and suffered from
11 asthma, heart arrhythmia, high blood pressure, cystitis, and a
12 history of prostate cancer with radiological treatment. See
13 Emergency Motion for Bail Pending Appeal, United States v. Davis, No.
14 19-1604, ECF No. 43-1 (3d Cir. Mar. 17, 2020). The appellant further
15 argued that while incarcerated, he lived in a shared cell with bunk-
16 style beds, in a unit housing over 100 inmates, where inmates had
17 close physical interaction. Id. The motions panel for the Third
18 Circuit ruled: "Appellant's Emergency Motion for Bail Pending Appeal
19 Due to Coronavirus Risk is denied. Appellant may renew the Emergency
20 Motion if he is diagnosed with COVID-19." Davis, ECF No. 50 (3d Cir.
21 Mar. 20, 2020).

22 Thus, the speculative possibility of COVID-19, even when
23 combined with defendant's health issues, simply does not constitute
24 an extraordinary and compelling reason to release defendant early
25 from his sentence. Nor has defendant provided any evidence that he
26 will be less likely to contract COVID-19 if released (particularly
27 given his stated intentions of international travel). Defendant's
28

1 circumstances are--in the present pandemic--far closer to ordinary
2 than "extraordinary." His motion must be denied.

3 b. Defendant remains a danger to the community,
4 likewise defeating his eligibility

5 Defendant's motion--even if properly exhausted, and even if
6 defendant were otherwise eligible for relief--must also be denied
7 because, as his illustrious criminal history reflects, he remains a
8 danger to the community.

9 This Court may not reduce a defendant's sentence unless it finds
10 that "the defendant is not a danger to the safety of any other person
11 or to the community, as provided in 18 U.S.C. § 3142(g)." USSG
12 § 1B1.13; see United States v. Gotti, No. 02-CR-743, 2020 WL 497987,
13 at *6 (S.D.N.Y. 2020) (release was inappropriate regardless of
14 extraordinary and compelling circumstances; defendant posed a
15 continuing danger to the public); accord United States v. Urso, No.
16 03-CR-1382, 2019 WL 5423431, at *3 (E.D.N.Y. Oct. 23, 2019); United
17 States v. Applewhite, No. 08-CR-60037, 2020 WL 137452, at *2 (D. Or.
18 Jan. 13, 2020) (denying compassionate release for seriously ill 80-
19 year-old inmate based on danger).

20 The record here precludes any such finding. To the contrary,
21 defendant poses a very real danger to the community. Defendant is a
22 high-profile member of the Guadalajara cartel, who trafficked
23 millions of dollars' worth of narcotics into the United States. He
24 was a leader in the organization, and interacted with other powerful
25 cartel members. Defendant's criminal history spans several decades,
26 including a conviction for escape from federal custody, as well as
27 charges (that were ultimately dismissed) for his role in the
28 abduction, torture, and murder of DEA agent Kiki Camarena.

1 Given defendant's criminal history and the nature of his crimes,
2 two different judges imposed life sentences, one without the
3 possibility of parole. Notwithstanding that his consecutive life
4 sentences preclude release of any sort, defendant now asks to be
5 released to his family's care in Honduras, where he will not be
6 subject to any form of supervision at all. Under these
7 circumstances, there can be no adequate assurance that defendant will
8 not present a danger to the community upon release. Indeed, for
9 these exact reasons, the warden at USP Canaan denied defendant's
10 request.

11 Nothing about the COVID-19 pandemic reduces defendant's danger.
12 Danger to the community is not limited to physical violence. It can
13 take different forms. See, e.g., United States v. Reynolds, 956 F.2d
14 192, 192 (9th Cir. 1992) ("[D]anger may, at least in some cases,
15 encompass pecuniary or economic harm."). Moreover, in the current
16 climate, irresponsible social habits also gravely endanger the
17 community. United States v. Hir, 517 F.3d 1081, 1088 (9th Cir. 2008)
18 ("community," within the meaning of 18 U.S.C. § 3142, is not
19 necessarily confined to local geography). All California residents
20 are currently required to shelter in place and "heed the current
21 State public health directives" to avoid the spread of COVID-19.
22 California Executive Order N-33-20 (March 19, 2020), available at
23 <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>. Such rules,
24 though enforceable by peace officers, rely largely on voluntary
25 compliance. A person who ignores such rules could increase infection
26 rates, leading to citizens' severe illness and death. Defendant's
27 history reflects, on a grand scale, an unwillingness to follow rules
28

1 and a disregard for the welfare of others--characteristics that now
2 have potentially fatal consequences.

3 Finally, defendant's age and purported rehabilitation alone do
4 not satisfy his burden. The standard for compassionate release is
5 not just whether someone is elderly and has performed well in prison.
6 To the contrary, "[p]ursuant to 28 U.S.C. § 994(t), rehabilitation of
7 the defendant is not, by itself, an extraordinary and compelling
8 reason for purposes of this policy statement." USSG § 1B1.13,
9 comment (n.3). Even being a "model inmate" does not warrant an
10 "abrupt departure from [a defendant's] current sentence."
11 Applewhite, 2020 WL 137452, at *2. Moreover, because there is a
12 significant difference between doing well in prison and doing well in
13 society, this Court, in evaluating the danger posed by defendant,
14 cannot ignore the nature and circumstances of the offense,
15 defendant's ties to the community, and his criminal history. 18
16 U.S.C. § 3142(g). An examination of those factors weighs against
17 release.

18 Defendant simply cannot be compared to the defendants in the
19 cases on which he relies. Those defendants established that, based
20 on their significant medical issues and detailed release plans, they
21 no longer represented a danger to the community. For example,
22 defendant Spears was serving a (mandatory, pre-Booker) life sentence,
23 had been placed at medical facility FCI Butner for medical treatment,
24 was diagnosed with an aggressive form of cancer along with other
25 chronic health problems, and presented a transition plan to live with
26 and be cared for by his family members. United States v. Spears, No.
27 98-CR-208-SI-22, 2019 WL 5190877, at *1-*2 (Oct. 15, 2019).
28 Similarly, defendant McGraw was also serving a life sentence, had

1 been placed at FCI Butner for medical reasons, was dependent on a
2 wheelchair and oxygen, had chronic diarrhea, and proposed living with
3 his sister. United States v. McGraw, No. 2:02-CR-00018-LJM, 2019 WL
4 2059488, at *2 (S.D. Ind. May 9, 2019). These release orders do not
5 counsel in favor of granting relief to defendant.

6 4. Even If Defendant Were Otherwise Eligible, 18 U.S.C.
7 § 3553(a) Factors Do Not Support a Shorter Sentence

8 Finally, any compassionate-release decision--even for a
9 statutorily eligible defendant--must also consider the factors under
10 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1)(A)(i). Those
11 factors--which this Court already considered when imposing
12 defendant's life sentences--do not support his request for premature,
13 permanent release. They support his original sentence.

14 Defendant makes essentially three arguments in this regard.
15 First, he points out that his drug conspiracy and distribution
16 convictions, while serious, did not involve violence. (Mot. at 29.)
17 However, not only was this likely considered by the sentencing
18 courts, it is true in only a narrow, literal sense. Defendant may
19 not have been convicted for crimes of violence, but there can be no
20 serious dispute that the narcotic trafficking activities of the
21 Guadalajara cartel, a criminal enterprise for which defendant
22 convicted of organizing, entailed a great deal of violence. Second,
23 defendant asserts that his sentences were improperly influenced by
24 the criminal charges arising from the Kiki Camarena murder case.
25 This is conjecture; given defendant's long criminal history and the
26 sheer scale of the crimes for which he was convicted, there was
27 plenty of support for imposing a life sentence even without the
28 Camarena case.

1 By imposing two consecutive life sentences, the sentencing
2 courts clearly intended that defendant spend the remainder of his
3 life in federal custody. Granting compassionate release would negate
4 that. Moreover, defendant's plan to live with his adult children in
5 Honduras means that he would not be subject to any form of
6 supervision upon release. The law, and the specific facts of
7 defendant's case, neither demand nor endorse that result.

8 **IV. CONCLUSION**

9 Defendant's motion for compassionate release should be
10 dismissed. Even if the Court could reach the merits of defendant's
11 motion, the motion should be denied for the reasons set forth above.